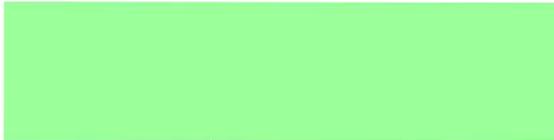
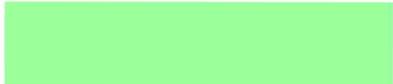


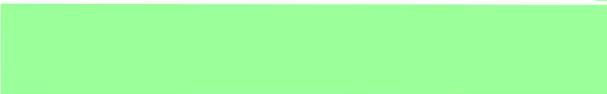
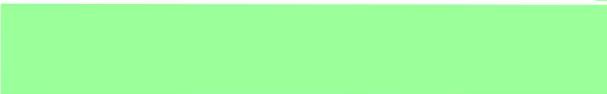


U.S. Citizenship  
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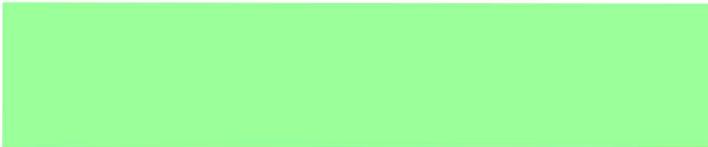


DATE: **MAR 28 2014** OFFICE: NEBRASKA SERVICE CENTER 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based visa petition was denied by the Director, Nebraska Service Center (director). The subsequent appeal was dismissed on February 9, 2012, by the Administrative Appeals Office (AAO). A motion to reconsider was dismissed by the AAO on February 1, 2013; a second motion to reconsider was granted and the appeal was again dismissed by the AAO on July 26, 2013. The matter is again before the AAO on motion to reconsider. The motion will be dismissed. The petition will remain denied.

The petitioner describes itself as an Indian restaurant. It seeks to employ the beneficiary permanently in the United States as a curry chef. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the April 2, 2001, priority date of the visa petition. The director denied the petition accordingly. The AAO affirmed the director's decision. The AAO's decision provided a detailed analysis of the wages paid to the beneficiary as well as a detailed breakdown of the petitioner's net income and net current assets as a C corporation from 2001 through 2004, as an S corporation in 2005 and 2006, and as a sole proprietorship from 2007 through 2010. The AAO concluded that neither the petitioner's net income nor its net current assets was sufficient to pay the proffered wage in 2001, 2002, 2004, 2005 or 2006. Beyond the net income and net current assets, the AAO also viewed the totality of the circumstances as presented in the record of proceedings. The AAO noted that the petitioner's gross receipts and total payroll had fallen significantly during the period from 2001 through 2006. The AAO also noted that, unlike the petitioner in *Sonegawa*, the petitioner in this case had not submitted any evidence of its reputation within its industry, nor had it cited uncharacteristic events that decreased its income or increased its business expenses and prevented it from establishing the ability to pay the beneficiary the proffered wage in 2001, 2002, 2004, 2005 or 2006. Thus, the AAO concluded that the petitioner had not established that it had the continuing ability to pay the proffered wage and affirmed the director's decision.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, counsel presents additional arguments regarding the petitioner's financial situation and its reputation with its customers. However, a mere broad statement by the petitioner that its business was impacted adversely by the general downturn in the economy cannot, by itself, demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. As the petitioner has not alleged or identified any specific misapplication of law or policy by the AAO, this cannot be considered a proper basis for a motion to reconsider.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered

evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion to reconsider is dismissed. The petition remains denied.